paragraphs (b), (c) and (d) to read as follows:

§ 741.2 Maximum borrowing authority.

(a) * * *

(b) A federally insured state-chartered credit union may apply to the regional director for a waiver of paragraph (a) of this section up to the amount permitted under the applicable state law or by the state regulator. The waiver request must include:

(1) Written approval from the state regulator;

(2) A detailed analysis of the safety and soundness implications of the proposed waiver;

(3) A proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation; and

(4) An explanation demonstrating the need to raise the limit.

(c) The regional director will approve the waiver request if the proposed borrowing limit will not adversely affect the safety and soundness of the federally insured state-chartered credit union.

■ 5. Add new § 741.221 to read as follows:

§ 741.221 Suretyship and guaranty requirements.

Any credit union, which is insured pursuant to Title II of the Act, must adhere to the requirements in § 701.20 of this chapter. State-chartered, NCUSIF-insured credit unions may only enter into suretyship and guaranty agreements to the extent authorized under state law.

[FR Doc. 04–4076 Filed 2–24–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Conversion of Insured Credit Unions to Mutual Savings Banks

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is updating its rule regarding conversion of insured credit unions to mutual savings banks. This amendment requires a converting credit union to provide additional information in the notice to members of its intent to convert. Specifically, the credit union must disclose any economic benefit a director or senior management official of a converting credit union may receive in connection with the conversion. A converting credit union must also disclose how conversion to a mutual savings bank will affect members' voting rights, and how any subsequent conversion to a stock institution may affect ownership interests. NCUA believes this amendment enhances a member's ability to make informed decisions about the conversion without increasing the regulatory burden for converting credit unions and helps converting credit unions to more fully understand what NCUA expects to be included in the notice to members.

DATES: This final rule is effective March 26, 2004.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Credit Union Membership Access Act (CUMAA) was enacted into law on August 7, 1998. Public Law 105–21. Section 202 of CUMAA amended the provisions of the Federal Credit Union Act (Act) concerning conversion of insured credit unions to mutual savings banks. 12 U.S.C. 1785(b). CUMAA required NCUA to promulgate final rules regarding charter conversions that were: (1) Consistent with CUMAA; (2) consistent with the charter conversion rules promulgated by other financial regulators; and (3) no more or less restrictive than rules applicable to charter conversions of other financial institutions. NCUA issued rules in compliance with this mandate. 63 FR 65532 (November 27, 1998); 64 FR 28733 (May 27, 1999).

In the approximately five years since NCUA first amended Part 708a to comply with CUMAA, NCUA has grown concerned that credit union members may not fully appreciate the effect the conversion may have on their ownership interests in the credit union and voting power in the mutual savings bank. Accordingly, NCUA issued a proposed rule in September 2003 to require a converting credit union to disclose additional information to its members to better educate them regarding the conversion. 68 FR 56589 (October 1, 2003).

B. Discussion

There are increasing indications that a high percentage of credit unions that convert to mutual savings banks have or will undertake a second conversion to become a stock institution. While it is certainly within the rights of the credit union membership to exercise their right to convert and change the structure of the institution, converting credit unions generally do not adequately discuss in the notice to credit union members the likelihood and ramifications of a second conversion to a stock institution.

While state laws may vary, under the Office of Thrift Supervision's regulations, there is no minimum waiting period for a newly chartered federal mutual savings bank to convert to a stock institution. As a result, it is possible for a credit union that converts to a federal mutual savings bank to attempt to convert to a stock institution in as little as two years. In most cases, a conversion from a mutual savings bank to a stock institution will result in a loss of ownership interest for the vast majority of members because they do not purchase stock, while most officers and directors do obtain stock in the newly created stock institution. While members and officials generally have the same opportunity to purchase stock at an initial public offering, officials also obtain stock through other methods such as employee stock ownership plans, restricted stock awards and stock options. These opportunities, which are not available to the general membership, have in the past been little understood and inadequately explained to the members.

While CUMAA provides that an insured credit union may convert to a mutual savings bank without the prior approval of NCUA, it also requires NCUA to administer the member vote on conversion and review the methods and procedures by which the vote is taken. This is reflected in NCUA's conversion rule. The rule requires a converting credit union to provide its members with written notice of its intent to convert. 12 CFR 708a.4. It also specifies that the member notice must adequately describe the purpose and subject matter of the vote on conversion. *Id.* In addition, a converting credit union must notify NCUA of its intent to convert. 12 CFR 708a.5. A credit union must provide for NCUA's review a copy of the member notice, ballot, and all other written materials it has provided or intends to provide to its members in connection with a conversion. *Id.*

A converting credit union has the option of submitting these materials to NCUA before it begins to distribute them to its members. *Id.* This enables a credit union to obtain NCUA's preliminary determination on the methods and procedures of the member vote based on NCUA's review of the written materials. A credit union can then decide whether to move forward with the often expensive, labor intensive conversion process with an understanding of NCUA's position.

NCUA believes its review of these materials is a practical and unintrusive way of fulfilling, at least part of, its congressionally mandated responsibility to review the methods and procedures of the vote to ensure that all reasonable measures to accomplish full disclosure and transparency have been taken to inform the credit union membership of the potential consequences of their vote. Prior submission of these materials does not relieve the credit union of its other obligations under Part 708a, nor does it eliminate NCUA's right to disapprove the methods and procedures of the vote if the credit union fails to conduct the vote in a fair and legal manner. 12 CFR 708a.5.

If NCUA disapproves of the methods and procedures of the member vote, after the vote is conducted, then NCUA is authorized to direct a new vote be taken. 12 CFR 708a.7. NCUA interprets its responsibility to review the methods and procedures of the member vote to include determining that the member notice and other materials sent to the members are accurate and not misleading, that all required notices are timely, and that the membership vote is conducted in a fair and legal manner.

NCUA believes that full and proper disclosure to members that they could potentially lose their ownership interest in their credit union if it ultimately became a stock institution is key to describing the purpose and subject matter of the member vote adequately. Failing to discuss this integral risk associated with the conversion adequately is tantamount to providing misleading information. Most of the conversion documentation NCUA has reviewed since CUMAA went into effect has contained some information relating to this issue, but it has become apparent to NCUA that it has not addressed it sufficiently to make this point clear to members.

A charter conversion is a sophisticated transaction with consequences that might not surface for a number of years and that are often not recognizable at the time of conversion to even the most astute members. As a result, few members can make a truly informed decision about how the conversion will affect their ownership interest in the credit union unless the credit union provides them with this information. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA amends Part 708a to require a converting credit union to disclose that the conversion from a credit union to a mutual savings bank could lead to members losing their ownership interests in the credit union if the mutual savings bank subsequently converted to a stock institution and the members do not become stockholders.

The Act provides that a member of a federal credit union is entitled to only one vote irrespective of the number of shares held by that member. The ''one member one vote'' structure gives an equal voice to all members, even those of modest means. 12 U.S.C. 1760. Most, if not all, state credit unions also are required to follow this approach. This is not usually the case with mutual savings banks. In most instances, mutual savings banks allot votes based on the amount of a member's deposits. Commonly, one vote is granted for each $100 a member has on deposit up to a maximum of 1,000 votes. Also, many issues, such as election of directors, which are subject to a member vote in a credit union, may not be subject to a vote in a mutual savings bank. As noted above, NCUA believes that disclosing that members could have lesser voting power in the mutual savings bank than they do in the credit union is central to describing adequately the purpose and subject matter of the member vote. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA amends Part 708a to require a converting credit union to disclose how the conversion from a credit union to a mutual savings bank will affect members' voting rights. The language of the proposal would have required a disclosure that the members may have lesser voting rights in a mutual savings bank. This final rule requires an actual explanation of how voting rights will change. This is a clearer articulation of the information the proposal intended members to receive and will assist members in casting a better informed vote on the proposed conversion.

NCUA's conversion rule echoes CUMAA by providing that directors and senior management officials of a credit union may not receive any economic benefit from the conversion of their credit union other than compensation and benefits paid to them in the ordinary course of business. 12 CFR 708a.10. This is intended to insure that management's decision to begin the conversion process is based on sound business judgment reflecting the best interests of the members. Consistent with this statutory and regulatory limitation, NCUA believes it is appropriate to require a converting credit union to disclose in the member notice any conversion related benefits a director or senior management official may receive, including compensation not permitted in the credit union context. To be complete, this disclosure must include any stock related benefits associated with a subsequent conversion to a stock institution. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA amends Part 708a to require a converting credit union to disclose any increased compensation or other conversion related benefits, including stock related benefits, that directors or senior management officials may receive. This disclosure must include a comparison of the stock related benefits available to the general membership with those available to officials and employees in the event of conversion to a stock institution. This comparison of stock benefits more clearly articulates the information the proposal intended members to receive and will assist members in casting a better informed vote.

C. Summary of Comments

NCUA received forty-five comment letters regarding the proposed rule: nine from federal credit unions, seven from state credit unions, one from a professional association representing the forty-eight state credit union regulators, sixteen from credit union trade organizations, two from state financial institution regulators, one from a financial services company that has been involved in facilitating the majority of credit union conversions to mutual savings banks, two from law firms that also have been involved in facilitating many credit union conversions to mutual savings banks (together these law firms and the financial services company will be referred to as conversion consultants), one from an attorney who represents credit unions, three from private individuals, and three from banking trade organizations.

Thirty-four of the commenters fully supported the proposal and acknowledged the importance of educating credit union members about the effects and ramifications of the conversion to enable them to cast informed votes. Over two-thirds of those supporters stated that they believe NCUA should impose more disclosures and requirements on converting credit unions than proposed. The kinds of additional disclosures and requirements they suggested include: requiring the member vote be conducted by an independent third party, establishing a voting standard greater than the present simple majority of those who actually vote, disclosing the percentage of credit unions that have converted to mutual savings banks that went on to convert to the stock form of ownership, disclosing the views of a converting credit union's

directors who do not favor converting or have specific reservations, permitting members to post comments on the conversion proposal as a part of the conversion process, disclosing that voluntary liquidation of the credit union is an option for members to extract their ownership interests in the credit union if management believes the institution can no longer serve its members' needs as a credit union, increasing the number of members required for a quorum for special meetings to insure that there is sufficient member participation for such a monumental decision, disclosing the estimated cost of the conversion, providing additional financial data to support claims that the conversion will benefit members, and disclosing historical data regarding the percentage of stock management buys as compared to the amount members buy in a stock bank that previously converted from a credit union to a mutual savings bank to the stock form of ownership.

One commenter supported parts of the proposal, but opposed some sections it believes require speculation on the credit union's part. Three commenters stated that the current disclosure requirements are sufficient.

The conversion consultants and the banking trade organizations opposed the proposal. Some of these commenters believe the proposal is inconsistent with CUMAA, duplicates the disclosures required by other regulators like the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS), or requires the credit union to determine whether it will *ever* convert to the stock form of ownership. One of these commenters stated that it did not believe that a credit union disclosing its intent to convert to stock would enhance a member's ability to cast an informed vote. NCUA is aware of the limitations that CUMAA has placed on its authority to approve a conversion but is mindful of its responsibility to oversee the methods and procedures applicable to the member vote on conversion and protect the interests of credit union members. The proposal does not require a converting credit union to speculate about future events, rather it simply provides that the credit union must disclose its present intent regarding its business plans and provide information about how future events might affect members' interests. Although NCUA does not necessarily agree that the proposal duplicates disclosures required by the SEC, FDIC, and OTS, NCUA believes that, even if it did, these disclosures are necessary at the time the credit union's members are deciding how to vote on the conversion to a mutual savings bank. If credit union members wait to receive similar disclosures from the SEC, FDIC, or OTS, then that means the credit union has already converted to a mutual savings bank and may be on its way to converting to the stock form of ownership. Obviously, at that point, the disclosures are too late with respect to enabling a credit union member to make an informed decision on the conversion from a credit union to a mutual savings bank. For the reasons discussed above, NCUA adopts the proposed amendments as final without change.

D. Additional Information

NCUA appreciates the valuable suggestions offered by commenters who believe NCUA should impose more disclosures and requirements on converting credit unions. Many of these suggestions deserve further consideration but are beyond the scope of the proposal and will have to be considered in a separate rule making. Also, over time, NCUA has gained a more in-depth, practical understanding of the nuances of the disclosure and voting processes associated with a conversion. Accordingly, in the near future, NCUA intends to further fine tune the conversion regulation by providing more specific guidelines to help credit unions understand what will satisfy the regulatory standard that the vote be conducted in a fair and legal manner.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule provides the procedures an insured credit union must follow to convert to a mutual savings bank. The final amendments will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 708a

Charter conversions, Credit unions.

By the National Credit Union Administration Board on February 19, 2004.

Becky Baker,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR part 708a as follows:

PART 708a—CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS

■ 1. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785(b).

■ 2. Section 708a.4 is amended by adding paragraph (d) to read as follows:

§ 708a.4 Voting procedures.

* * * * *

(d)(1) An adequate description of the purpose and subject matter of the

member vote on conversion, as required by paragraph (c) of this section, must include:

(i) A disclosure that the conversion from a credit union to a mutual savings bank could lead to members losing their ownership interests in the credit union if the mutual savings bank subsequently converts to a stock institution and the members do not become stockholders;

(ii) A disclosure of how the conversion from a credit union to a mutual savings bank will affect members' voting rights; and

(iii) A disclosure of any conversion related economic benefit a director or senior management official may receive including receipt of or an increase in compensation and an explanation of any foreseeable stock related benefits associated with a subsequent conversion to a stock institution. The explanation of stock related benefits must include a comparison of the opportunities to acquire stock that are available to officials and employees, with those opportunities available to the general membership.

(d)(2) In connection with the disclosures required by paragraphs (d)(1)(i) through (iii) of this section, the converting credit union must include an affirmative statement, that at the time of conversion to a mutual savings bank, the credit union does or does not intend to:

(i) Convert to a stock institution;

(ii) Provide any compensation to previously uncompensated directors or increase compensation or other conversion related benefits, including stock related benefits, to directors or senior management officials; and

(iii) Base member voting rights on account balances.

[FR Doc. 04–4075 Filed 2–24–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE203, Special Condition 23–143–SC]

Special Conditions; Avidyne Corporation, Inc.; Various Airplane Models; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Avidyne Corporation, 55 Old Bedford Road, Lincoln, MA 01773, for a Supplemental Type Certificate for the models listed under the heading ''Type Certification Basis.'' This special condition includes various airplane models to streamline the certification process needed to improve the safety of the airplane fleet by fostering the incorporation of new technologies that can be certificated affordably under 14 CFR part 23.

The airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic flight instrument system (EFIS) display, Model 700–00006–1XX(), manufactured by Avidyne Corporation, Inc., for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is February 11, 2004. Comments must be received on or before March 26, 2004.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE203, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE203. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE203.'' The postcard will be date stamped and returned to the commenter.

Background

On July 3, 2003, Avidyne Corporation, 55 Old Bedford Road, Lincoln, MA 01773, made an application to the FAA for a new Supplemental Type Certificate for airplane models listed under the type certification basis. The models are currently approved under the type certification basis listed in the paragraph headed ''Type Certification Basis.'' The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Avidyne Corporation must show that affected airplane models, as changed, continue to meet the applicable provisions, of the regulations incorporated by reference in Type Certificate Numbers listed below or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the original ''type certification basis'' and can be found in the Type Certificate Numbers listed below. In addition, the type certification basis of airplane models that embody this modification will include § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment